

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JULIO COLON

v.

C.A. NO. 13-4392

JESSICA BONILLA, et al.

MEMORANDUM OPINION AND ORDER

SCHMEHL, J.

October 22, 2013

Plaintiff, a prisoner, has filed a pro se 42 U.S.C. § 1983 civil rights lawsuit against defendants Jessica Bonilla, Diana Rivera Ortiz, Allstate Abstract, Inc. and John Doe, alleging that the defendants, who are not prison officials, defrauded plaintiff of his property during his incarceration. Plaintiff seeks the return of his property as well as monetary relief. The Court previously denied plaintiff leave to proceed in forma pauperis without prejudice because plaintiff failed to file a certified copy of his prisoner account statement for the entire six-month period prior to filing of this action. In the same Order, the Court directed the Clerk to close the case for statistical purposes. Plaintiff then paid the filing fee and the case was reopened. For the reasons that follow, the Complaint will be dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

28 U.S.C. § 1915(e)(2)(B)(ii), covering in forma pauperis proceedings, provides that:

- (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—
 - (B) the action or appeal—
 - (ii) fails to state a claim upon which relief can be granted

In order to bring suit under § 1983, the plaintiff must allege in the complaint that a person acting under color of state law deprived him of his constitutional rights. Revell v. Port Auth. of N.Y. and N.J., 598 F.3d 128, 134 (3d Cir. 2010). The complaint filed in this case does not allege or even suggest that any of the defendants acted under color of state law with respect to plaintiff's claim. Thus, plaintiff has failed to state a cognizable federal claim under 42 U.S.C. § 1983.

Because plaintiff has failed to allege a cognizable federal claim under 42 U.S.C. § 1983, the action is dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). The dismissal will be without prejudice to plaintiff's right to pursue this action in the appropriate state court or, if the parties are citizens of different states and the amount in controversy is in excess of \$75,000.00, exclusive of interest and courts, in federal court under 28 U.S.C. § 1332, which provides for diversity of citizenship jurisdiction.

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AND NOW, this 22nd day of October, 2013, having considered plaintiff's complaint, it is hereby ORDERED that the complaint is DISMISSED without prejudice as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

It is further ORDERED that all outstanding motions are DENIED as moot.

It is further ORDERED that the Clerk shall mark this case closed for statistical purposes.

BY THE COURT:

/s/ Jeffrey L. Schmehl
JEFFREY L. SCHMEHL